IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Criminal R.C. No.1811 of 2004
and Crl.M.P.No.10839 of 2004

Kalaimani .. Petitioner/II Petitioner

Vs.

1. Anthonisamy
2. Marie Joseph
3. Govindasamy
4. Raji @ Arockiasamy
5. Rayappan
6. Arokiadass
7. Mohan
8. Charles .. Respondents (Responidents and Petitioner I and III to VII
(Respondents 3 to 8 are not the contesting respondents and
hence they are give up)

Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. against the Order, dated 06.09.2004 made in M.C.No.106 of 1999 on the file of the Sub Divisional Magistrate, Karaikal.

For petitioner : Mr.T.Susindran

For respondents 1 and 2 : Mr.K.Yamunan

O R D E R

This Criminal Revision is directed against the order, dated 06.09.2004, passed in M.C.No.106/99, on the file of the Sub Divisional Magistrate, Karaikal, under Section 145 of the Code of Criminal Procedure, by and which the Sub Divisional Magistrate, held that the respondents herein are entitled to retain the possession of the disputed area, until they are evicted by competent Civil Court, as per law.

2. The learned counsel appearing for the Criminal Revision Petitioner would contend that the Sub Divisional Magistrate has decided the M.C.No.106/99 beyond his jurisdiction, and against the verdict of the Civil court. The learned counsel for the revision

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petitioner further contended that the Sub Divisional Magistrate cannot decide as to, who is in possession of the property, since the same has to be decided by the Civil Court and as per the impugned order, the Executive Magistrate has held that the respondent herein are in possession of the property, against law. In support of his contention, the learned counsel relied on the decisions 1. V.Jayachandran @ Chandran v. The Sub-Divisional Manager & others, reported in 2002 (1) MWN (Cr.) 110. 2. Shanmugham and another vs. The Inspector of Police (Law and Order), Gobichettipalayam & others, reported in 1997 (2) MWN (Cr.) 346.

3. In the decision V.Jayachandran @ Chandran v. The Sub-Divisional Manager & others, reported in 2002 (1) MWN (Cr.) 110, this Court has held as follows :

> " 9. It is admitted that the fourth respondent filed a suit with reference to the same property before Sub Court and at a later point of time, the petitioner himself filed a separate suit for permanent injunction with reference to the very same property. Only thereafter, the first respondent Executive Authority has issued the preliminary order calling upon the parties to appear before him and file the written statement. It is settled position of law that when once the Civil Court had taken note of the dispute between the parties with reference to the declaration or possession, then it is not open to the Executive Authority to entertain any application. Further more, to invoke Section 145 of Criminal Procedure Cods, there should be a report from the competent police officer alleging that there was any threat to law and order or there is any possibility of breach of peace in that area..."

4. In the decision Shanmugham and another v. The Inspector of Police, (Law and Order), Gobichettipalayam & others, reported in 1997 (2) MWN (Cr.) 346, at page 347, it has held as follows :

> "5...But, however the ultimate order passed by him on possession cannot go against the finding rendered by the Civil Court. The best thing the Executive Magistrate should have done on the facts of this case is to respect the finding rendered by the Civil Court in C.M.A.No.13 of 1990 and protect 'A' party's possession and not that of 'B' party's."

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5. Per contra, the learned counsel appearing for the respondents 1 and 2 would contend that the Sub Divisional Magistrate has passed the order in M.C.No.106 of 1999, only pursuant to the Order dated 03.05.1991 made in A.S.No.49/89 on the file of the Additional District Judge, Pondicherry at Karaikal and according to him, the impugned order is not against law. In support of his contention, the learned counsel for the respondents 1 and 2 relied on the decision Ranbir Singh v. Dalbir Singh, reported in 2002 AIR SC 1500, wherein the Honourable Apex Court has held at page number 1502 as follows :

> " 9...Keeping in view the limited scope of the proceeding under Section 145, Cr.P.C. these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding under Section 145, Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145(1) Cr.P.C and sustainability of the order of attachment passed under Section 146(1) Cr.P.C. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by respondent No.1. The suits and the interim order are pending further consideration before the Civil Court. "

6. In this criminal revision, it is not in dispute that the first respondent herein had filed the suit in O.S.No.111/87 on the file of the Principal District Munsif, Karaikal, for declaration of his right and consequential injunction in respect of the suit property, the same was dismissed by the learned Principal District

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Munsif, Karaikal, by his Judgment, dated 31.07.1989. Aggrieved by which, the first respondent preferred an appeal in A.s.No.49/89 on the file of the Additional District Judge, Pondicherry at Karaikal.

7. Considering the oral and documentary evidence recorded and on hearing the arguments of both sides, the appellate court held by its Judgment that the first respondent herein is entitled to an injunction against the revision petitioner and another, in respect of 2 ½ mahs of nanja land. The court has further held that the appeal in respect of the claim of possession and enjoyment of fishing right in the pond Ananthakulam was also allowed, until the license would be cancelled or revoked by lessor Selvaraju and others. In the said Judgment, the Additional District Court, further, ordered that the first respondent herein is not entitled to any injunction against the revision petitioner G.Kalaimani and another in respect of other two ponds described in the plaint as Sambukulam and Kuttakulam. As per the decision of the Civil Court, namely, the Additional District Court, Karaikal, by Judgment, dated 03.05.1991, made in A.S.No.49 of 1989, it has been further held that in the event of any dispute over the extent of the three ponds, the parties to the said appeal would be entitled to file application for appointment of Commissioner for inspection to locate and find out actual extent of each of the pond and that the order was passed without prejudice to the rights of other respondents therein. With that findings, the appeal preferred by the first respondent herein was allowed on the aforesaid terms and conditions. Subsequently, Anthonisamy, the appellant in A.S.No.49/89 filed an Interlocutory Application in I.A.No.69/93, under Order 26 Rule 9 of the Code of Criminal Procedure for appointment of an Advocate Commissioner, seeking for a direction to inspect the suit property to measure the same, so as to locate and identify 2 ½ mahs of land, for which he was entitled to be in possession of the property, and accordingly, Advocate Commissioner was appointed.

8. It is seen that after inspecting the property, the Commissioner filed his Report. Considering the same, and the arguments advanced by both sides, the learned Additional District Judge, Pondicherry at Karaikal, by his order, dated 30.04.1996, passed in I.A.No.69/93 in A.S.No.49/89, held that the Commissioner had certified that there was no such separate three ponds and hence, the court was of the view that it was not possible to locate and identify Ananthakulam alone and the 2½ mahs of nanja land in the total extent of 10 mahs, could not be demarcated and with the above finding, the said Interlocutory Application was dismissed by the learned Additional District Judge, Pondicherry at Karaikal. Subsequently, on petition, the impugned order in M.C.No.106/99 under Section 145 of the Code of Criminal Procedure was passed by the Sub Divisional Magistrate,

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Karaikal. The above stated facts are not in dispute in this criminal revision.

9. The Sub Divisional Magistrate has held in the impugned order, dated 06.09.2004 in M.C.No.106/99 that the respondents 1 and 2 herein were entitled to retain their possession of the disputed area, until they are evicted by the competent Civil Court, as per law. It is not in dispute that the competent Civil Court, namely, the Additional District Court, Pondicherry at Karaikal, has decided that the first respondent is entitled to 2 ½ mahs of nanja land, out of 10 mahs of land, but as per the order, dated 30.04.1996, passed in I.A.No.69/93 in A.S.No.49/89, it has further held that as per Commissioner's Report, Ananthakulam, as stated by the first respondent herein could not be identified and demarcated out of the said 10 mahs of land.

10. As contemplated under per Section 145 of the Code of Criminal Procedure, whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute is likely to cause breach of the peace, concerning with any land or water or boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned to such dispute to attend his Court in person or by pleader, on a specified date and time and to put in written statements of their respective claims in respect of the fact of actual possession of the subject matter in dispute and decide the same to prevent breach of peace.

11. It is a settled proposition of law that under Section 145 of the Code of Criminal Procedure, the Executive Magistrate neither decide any question of title or possession, nor act against the verdict of any Civil Court.

12. Here in this case, as contended by the learned counsel for the revision petitioner, it is seen that the Sub Divisional Magistrate, has passed the order, even without a complaint from any police officer as contemplated under Section 145 of the Code of Criminal Procedure, and also held the possession of the property in favour of the respondents 1 and 2 herein and passed the impugned order against the finding of the order, dated 30.04.1996, passed in I.A.No.69 /93 in A.S.No.49/89, on the file of the Additional District Judge, Pondicherry at Karaikal. Hence, as contended by the learned counsel for the appellant, I am of the view that the impugned order has been passed by the Sub Divisional Magistrate beyond the purview of Section 145 of the Code of Criminal Procedure.

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13. As per the order, dated 30.04.1996, made in I.A.No.69/93 in A.S.No.49/89, the Advocate Commissioner, after inspecting the property had submitted his report, dated 29.04.1994, before the Additional District Court of Pondicherry at Karaikal as follows :

> " Commissioner inspected the property on 21.04.1994, after issue of notice to the parties who were present. The water had dried up and the landscape was visible. Water was stagnant in three locations which gave on appearance of ponds. But there was no in-let or outlet for the ponds with any other infrastructure to call at as a pond. Local enquiry by the Commissioner resulted in information that the entire property was called Ananthakulam. As per the decree, the suit property is of an extent of 2 ½ mahs and the nanja portion is situate on the western side of the entire property. The warrant was only to identify Ananthakulam. There is no pond in an area of 2 ½ mahs. Hence, the Commissioner submitted that unless the exact location of Ananthakulam is determined by the court, it is not possible to allot any portion to the petitioner."

14. It is seen that the suit in O.S.No.111/87 was filed in the year 1987 and as per the Judgment, dated 03.05.1991, passed in A.S.No.49/89, the Civil Court has held that the first respondent herein is entitled to be in possession of an extent of 2 ½ mahs of nanja land, out of 10 mahs, but as per order, dated 30.04.1996, passed in I.A.No.69/93, in the said appeal, without considering the ends of justice, the court dismissed the application, merely on the ground that the Advocate Commissioner could not identify the property. The trial court could have given further opportunity to the parties for taking steps to inspect the suit property, again by the Advocate Commissioner, with the help of Taluk Surveyor, so as to take measurements of the property at the appropriate time, when the water level is low, in order to measure the property, so as to give a quietus to the dispute, but the court has simply dismissed the application on the aforesaid grounds.

15. As per the latin maxim, "ubi jis ibi remedium", a cordial principle of jurisprudence, where there is a right, there is a remedy. Here, in this case, the Additional District Court of Pondicherry at Karaikal, has declared certain rights with regard to the property in favour of the first respondent. But, pursuant

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to the same, when the Interlocutory Application in I.A.No.69/93 was filed, for no fault of the first respondent herein, on technical grounds, that the Commissioner could not identify and demarcate the property of 2 ½ mahs out of 10 mahs, the court below has dismissed the application, which would not meet the ends of justice.

16. As discussed earlier in this order, the impugned order passed by the Sub Divisional Magistrate, Karaikal is beyond the purview of Section 145 of the Code of Criminal Procedure. Therefore, this Criminal Revision Petition is allowed and the impugned order, dated 06.09.2004, made in M.C.No.106/99 on the file of the Sub Divisional Magistrate is set aside. However, in the interest of justice, based on the maxim, ' ubi jus ibi remedium, the Additional District Court, Pondicherry at Karaikal is directed to provide opportunity to the parties to A.S.No.49/89 on its file, to take steps for demarcating the property, as per the Judgment, dated 03.05.1991, rendered by the court below.

17. With the above direction, the criminal revision is allowed. Consequently, connected Crl.M.P.No.10839 of 2004 is closed.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Sub Divisional Magistrate, Karaikal.

2. The Additional District Judge
Pondicherry at Karaikal.

3. - do - Thro The Chief Judge, Pondicherry

+ one cc to Mr. T. Susindran, Advocaet sr no. 59232
+ one cc to Mr. K. Yamunan, Advocate sr no. 58704

MDR(CO)
NM(20.12.2006)

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